IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 23286 of 2007(V)

PETITIONER:

JOSE, S/O.VARAPPAN, PURATHOOR HOUSE,
PARANNUR, THRISSUR DISTRICT.

BY ADV. SRI.JIJO PAUL

RESPONDENTS:

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1. THE CHOONDAL GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
P.O.KECHERY - 680 501,
THRISSUR DISTRICT.

2. THE ASSISTANT TAHSILDAR,
THALAPILLY TALUK, THRISSUR DISTRICT.

BY ADV. SRI.P.RAMAKRISHNAN
GOVT.PLEADER SRI.P.K.RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(C).No. 23286 OF 2007

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Dated this the 8th day of August, 2007

JUDGMENT

Petitioner challenges Ext.P7, P9 and P10 and seeks a declaration that the Kerala Panchayath Raj (Removal of Encroachments and Imposition and Recovery of Penalties for Unauthorised Occupation) Rules 1996 is illegal, null and void as it is ultra vires the parent statute. He further seeks a direction to the first respondent to pay an amount of Rs.1.5 lakhs as compensation for the illegal action and demolition of a portion of the petitioner's fencing on his western and northern boundaries.

Case of the petitioner in brief is as follows:

Petitioner is the owner in possession of some extent of land in Survey No.284/1 of Choondal Village. Petitioner was served with Ext.P1 notice dated 14/06/1984 under the Kerala Panchayath Removal of Encroachments and Imposition and Recovery of Penalties for Unauthorised Occupation Rules 1964. Petitioner filed Ext.P2 suit. Ext.P3 is the commission report. It is

stated that while the suit was pending, there was a settlement between the Panchayath and the petitioner whereby the Panchayath agreed to issue NOC to the Petitioner for assignment of the land in favour of the petitioner. Petitioner produced Ext.P5 communication in this regard and Ext.P6 no objection. The suit came to be withdrawn. Petitioner surrendered 0.25 cents in favour of the Panchayath and the extent of 1.25 cents over which the dispute had arisen continued to remain in the possession of the petitioner. It is while so, petitioner received Ext.P7 dated 30-06-2007 by which petitioner was directed to vacate from unauthorised occupation of 1.830 cents within 7 days. Petitioner submitted Ext.P8 lawyer notice dated 06-07-2007. Upon receipt of the lawyer notice, Panchayat issued Ext.P9 letter dated 17-07-2007 and directed the petitioner to produce the records with regard to the suit which was settled between the Panchayat and the petitioner. On 18-07-2007, petitioner received Ext.P10 notice threatening that action will be taken against him under the Kerala Panchayat Raj (Removal of Encroachments and Imposition and Recovery of Penalties for Unauthorised Occupation) Rules 1996. According to the petitioner, 7 days

mentioned in Ext.P9 would expire only on 25-07-2007. Petitioner submitted Ext.P11 reply. He also submitted representation before the District Collector and it is forwarded to the Secretary for enquiry. Ext.P12 is the note forwarding the matter. Ext.P13 is the receipt for the same in this regard. Petitioner further states that he was expecting to be called for hearing. But a portion of the northern boundary was demolished by the officers of the first respondent Panchayat who came with the help of the police. They also demolished a small extent of the boundary on the western side of the property.

2. A statement has been filed by the counsel for the Panchayat. According to the first repsondent, it had received a complaint from 9 persons stating that the petitioner is causing obstruction to the access to their properties making encroachments on a Panchayath road. The report is produced as Annexure 1 . While so, second respondent directed the first respondent to evict the petitioner from 1.830 cents and report compliance and thus Ext.P7 is issued. As petitioner did not take any steps in compliance with Ext.P7, Ext.P10 notice is issued to provide him with another opportunity to clear the encroachments.

As the petitioner remained adamant, the encroachment was cleared on 27/07/2007. It is stated that property encroached upon by the petitioner vests with the Panchayath.

3. Counsel for the petitioner reiterate the contentions. He would submit that opportunity was not provided under the Rules.

4. After having heard the counsel for the parties, I feel that the writ petition can be disposed of directing that Petitioner be afford an opportunity of being heard and he can also be given an opportunity to produce whatever materials he wishes to produce before the first respondent. Accordingly, the writ petition is disposed of as follows:

Petitioner or his representative will be present before the first respondent on 18/08/2007 at 11:00 a.m.. The Secretary of the respondent-Panchayath will hear the petitioner, consider Ext.P11 objection and also any other materials which the petitioner may produce and take a decision in accordance with law within a period of one week from the date of hearing. The decision will be communicated to the petitioner within a further period of one week. It is for the petitioner to work out his

remedy in respect of prayer No.4, if so advised before the appropriate forum.

(K.M.JOSEPH, JUDGE)

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